

Remarks

Claims 1-40 were pending in the application. Dependent claim 4 and independent claim 39 were cancelled and independent claim 1 was amended to incorporate the elements of claim 4. Thus, claims 1-38 and 40 are currently pending in the application. No new matter has been added by the claims. Reconsideration is respectfully requested.

Rejections Under 35 U.S.C. § 102

Claims 1-11, 18, 25-35, 39 and 40 were rejected under 35 U.S.C. § 102 as being anticipated by Beltrani et al. This rejection is respectfully traversed.

Though the Examiner rejected claim 4 as being anticipated, the Examiner failed to explain where the cited Beltrani et al. reference discloses that "when attached, said flaps are in covering relation with respect to said dorsal portion of said user's foot" as previously recited in cancelled claim 4 and as now recited in independent claim 1. In fact, Beltrani discloses that the top tightening straps 18, to which the Examiner refers as flaps, are in a covering relation with respect to the ankle-boot 15 or shoe 3, not the dorsal portion of the user's foot. It is the overshoe of Beltrani which covers the user's foot. Further, Beltrani fails to suggest the element of flaps in covering relation with respect to the dorsal portion of the user's foot.

In contrast, in the present invention, the straps themselves cover the user's foot. As recited, in independent claim 1, the straps are conformable, thus, it is desirable that they are in covering relation with the dorsal portion of the user's foot. In particular, Applicant's specification recites, "[a] cushioning material assists in making the footwear structure comfortable to wear and utilize." Applicant's specification, at page 3, lines 31-32. Further, with regard to Applicant's invention:

The unique footwear structure differs from a swimming flipper shoe of the prior art in at least that with the footwear structure a user need merely place his foot on the sole and wrap the flaps about his foot to wear the footwear structure. A user suffering from a painful foot condition will experience less pain when affixing the footwear structure to his foot than he would when "putting on" a prior art swimming flipper shoe, as with the prior art shoe the user is required to insert his foot within an opening found in a prior art swimming flipper shoe. Where the user has a painful foot condition insertion of his foot within the opening, can be very painful.

Applicant's specification, page 4, lines 4-16.

Therefore, for at least these reasons, Applicant respectfully submits that Beltrani fails to teach or suggest the present invention. As claims 2-38 depend either directly or indirectly from independent claim 1, they are allowable for at least the same reasons as independent claim 1.

Further, Applicant submits that the cited Beltrani reference fails to teach or suggest Applicant's independent claim 40. Though the Examiner rejected claim 40 as being anticipated, the Examiner failed to explain where the cited Beltrani et al. reference discloses the element of "said flaps moveable between a position in which said flaps are attached to each other and a position in which said flaps are unattached from each other, *wherein in said unattached position, each of said flaps is moveable to reveal a substantial portion of said top surface of said sole*" (emphasis added), as recited in Applicant's claim 40. In fact, the Examiner fails to mention this element in the Office action. In Beltrani, it is seen, for instance in Figs. 1 and 4, that the swimming flipper straps 18, when in an unattached position, are moveable to reveal a substantial portion of the top surface of the ankle boot 15 or shoe 3, not the top surface of the sole. Therefore, for at least these reasons,

Applicant submits that Beltrani fails to teach or suggest elements of the claimed invention.

Conclusion

For at least the reasons submitted above, Applicant submits that the claims are in condition for allowance. Accordingly, a Notice of Allowance is respectfully requested.

CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Signed: Sally Azevedo
Typed Name: Sally Azevedo

Date: August 2, 2005

Respectfully submitted,

Nissa M. Strottman

Nissa M. Strottman

Reg. No. 52,257

Law Offices of Schneck & Schneck
P.O. Box 2-E
San Jose, CA 95109-0005
(408) 297-9733